



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 07-074

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. Instead of including the phrase “for purposes of this chapter” in the definitions of “live fish” and “live fish eggs,” the department should consider creating s. NR 19.001 (intro.) to read: “In this chapter:” or “In this chapter, unless the context requires otherwise:” Current s. NR 19.001 (16m) could also be changed accordingly. Also note that the use of the phrase: “for the purpose of this section” in s. NR 19.001 (12e), under current law, is incorrect in that it limits the application of that definition only to the definitions section.

b. Both s. NR 19.057 (1) and (2) refer to “forms available from the department.” A note should be included that states how the forms may be obtained at no charge. [See s. 227.14 (3), Stats.]

4. Adequacy of References to Related Statutes, Rules and Forms

It would be helpful to the reader if the statutory authority section of the rule summary explained how the substantive requirements of the rule fall within the department’s authority, in addition to the good statutory summaries that have already been included.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The phrase “possessed by a person” can be removed from the first sentence of both definitions of “live fish” because this is a requirement of both ss. NR 19.05 (3) and 20.08 (6). The requirement in the second sentence in both definitions of “live fish” that a minnow die

“while the person is fishing” may cause readers to think this only applies to minnows that were actually on the end of a line and being used as bait, or that minnows that die en route to the water or while the person is on the water but not actively engaged in fishing would not be included under this provision. The department should consider eliminating this provision from the definitions and instead inserting the following in both ss. NR 19.05 (3) and 20.08 (6): “This subsection does not apply to minnows possessed for use as live bait that were alive when the person took possession of them but that died while in the person’s possession.” If the department adopts this recommendation, this provision should also replace s. NR 20.08 (7) (d), at least in part.

b. The introductory material in the first sentence of proposed s. NR 19.05 (3) can be simplified because fish or eggs must necessarily be “possessed” in order to be “transported,” and it appears that the department intends that the transport prohibition apply whether or not the fish or eggs were taken from the listed waters. If this is the department’s intent, it would be clearer to use only the first clause: “No person may transport live fish or live fish eggs away from any of the following waters or their banks or shores.”

c. Also, in s. NR 19.05 (3), it would be clearer to separate out the provision describing what happens if the department finds Viral Hemorrhagic Septicemia (VHS) in other waters. This subsection could be followed by the exceptions in another subsection. It is also suggested that the provision “any other water is infected with Viral Hemorrhagic Septicemia virus” be changed to “Viral Hemorrhagic Septicemia virus is present in any other inland water or outlying water,” because the virus cannot infect the water, and the phrase “other water” could be construed to mean waters outside of Wisconsin and its outlying waters. This may necessitate defining or adding cross-references to definitions of the terms “inland water” and “outlying water.”

d. In s. NR 19.055 (1), the second use of the word “or” is inconsistent with the listed waters under s. NR 19.05 (3). [See also ss. NR 19.056 and 20.14 (8) (Note).] It is suggested that the primary series in these lists of waters be separated by semicolons to avoid confusion about comma use in a secondary series. Because of the multiple references to these lists of waters, it may be helpful to create a definition of “known VHS waters” or something to that effect so that this long list need not be inserted throughout the rule. See the previous comments about separating the provision related to the department finding VHS in other waters and referencing the presence of VHS in other inland or outlying waters. If this section is not separated, the comma after “inland or outlying water” and before “shall drain all water from the boat . . .” should be replaced with a semicolon.

e. In s. NR 19.056, see previous comments about referencing the presence of VHS in a water instead of the water being infected. Also see previous comments about requiring the department to determine that VHS is present in an inland water or outlying water, instead of “any water body,” which could extend beyond state waters.

f. In s. NR 19.27 (4) (a) 2. a., the department should remove the word “such” and add a comma before “except in the same body of water. . . .”

g. In s. NR 19.275 (3) (i), a comma should be added as follows: “Use fish, including parts of fish, as bait. . . .”

h. It may be helpful to create a list of the waters under s. NR 20.08 (6) (b) with each listed as a separate subdivision.

i. The department should consider moving the note following s. NR 20.08 (6) (b) so that it precedes this paragraph.